IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

CIVIL APPLICATION NO.281 OF 2005
IN
FAMILY COURT APPEAL ST.NO.29078 OF 2005

Smt.Minakshi Sanjay Sangamnerkar .. Applicant
v/s.
Shri Sanjay Chandrakant Sangamnerkar .. Respondent.

Mr.C.T.Chandratre for the applicant.

Ms.Seema Sarnaik for respondent.

CORAM : R.M. LODHA &
A.S.BAGGA, JJ.

DATED : 12TH JUNE, 2006.

P.C.

By the judgment and decree dated 10th July, 2003, the Family Court No.1, Pune passed the decree for dissolution of marriage and declared that the marriage solemnised on 25.1.1996 between the parties is dissolved under section 27(1)(d) of the Special Marriage Act from the date of the order. The decree came to be passed exparte as the appellant herein did not attend the court on earlier dates of hearing viz. 15.3.2003, 2.6.2003 and 9.7.2003. The present appellant-wife then made application for setting aside the exparte decree and restoration of the proceedings which came to be dismissed on 30th December, 2003. On 5th December, 2005, the first appeal came to be filed by the

wife aggrieved by the decree for dissolution of marriage dated 10th July, 2003. The appellant has made this application for condonation of delay in filing the appeal.

2. The explanation that has been set out for condonation of delay is that, after the decree for dissolution of marriage, the dialogues for reconciliation continued and are still going on and in such circumstances, the appellant-applicant did not think it fit to prefer the appeal but after realising that the judgment and decree dated 10th July, 2003 is a hurdle and the respondent has not remarried, the appeal was preferred alnogwith the application for condonation of delay.

3. On 3rd May, 2006, the advocate for the appellant-applicant took time for filing further affidavit in support of the application for condonation of delay. However, no further affidavit in support of the application has been filed. Rather the advocate submitted that appellant-applicant was not been in filing further affidavit.

4. In opposition to the application for condonation of delay, the respondent has filed reply affidavit. He has denied that any talks of reconciliation took place after the decree for dissolution of marriage was passed. He has stated that the appellant-applicant has chosen to file appeal only to harass him further.

5. We heard the learned counsel for the parties. The advocate

for the appellant-applicant referred to paragraphs 5 and 6 of the application and relied upon the citations: (i) Ram Nath Sao @ Ram Nath Sahu and others v. Gobardhan Sao and others, 2002(4) SRJ 51; (ii) M.K.Prasad v. P.Arumugam, 2001(7) SRJ 408 and (iii) Baburao Deorao Wankhede v. Sewa Sahakari Sanstha and others, 1989 Mah LR 1144.

6. The sufficiency of the cause depends on the facts of each case. The court has to have justice oriented approach in considering the application for condonation of delay but at the same time it cannot be overlooked that by lapse of time, the valuable right has accrued in favour of the opponent. Turning to the application for condonation of delay, we find that the only explanation that has been put forth by the appellant-applicant is that after decree for dissolution of marriage, the dialogues for reconciliation continued and is still going on. The respondent has denied this aspect in his reply. We are unable to accept the explanation submitted by the appellant as there are no details about the person who was mediating despite the decree for dissolution. As a matter of fact, we are informed that despite the efforts made by this court, the parties could not arrive at any amicable resolution of dispute. The appeal seems to have been preferred by the appellant-applicant after almost lapse of two years to drag on the litigation relating to matrimonial dispute.

8. The three judgments cited by the counsel for the applicant are of no help to the appellant-applicant. In the case of Ram Nath Sao, the Apex Court ruled that the expression “sufficient

cause" should receive a liberal construction so as to advance substantial justice when no negligence or inaction or want of bonafide is imputable to a party. There cannot be any dispute about the aforesaid legal position. However in the facts and the circumstances of the present case, we have found that delay is not sufficiently explained and the case for exercise of discretion under section 5 of the Limitation Act has not been made out.

9. In the case of M.K.Prasad, in the facts and circumstances obtaining therein, the Supreme Court condoned the delay of 554 days in filing the application for setting aside the exparte decree upon the appellant's paying a cost of Rs.50,000/- in addition to a cost of Rs.10,000/- already paid. The peculiarity of the facts obtaining therein do not apply to the facts of the present case.

10. In the case of Baburao Deorao Wankhede, the Single Judge of this court condoned the delay on the ground that the impugned order was causing grave injustice and the interest of justice demanded condonation of delay. In the facts of the present case, we find that the appeal has been filed by the appellant-applicant to drag on matrimonial dispute.

11. All in all, we find that the long delay of almost two years remains unexplained by sufficient cause.

12. We, accordingly, reject the application for condonation of delay.

Oral Prayer for stay is rejected.

Certified copy expedited.

(R.M.LODHA, J.)

(A.S.BAGGA, J.)